

CPCH9962618



Patent Office of the People's Republic of China

Address : Receiving Section of the Chinese Patent Office, No. 6 Tucheng Road West, Haidian District, Beijing. Postal code: 100088

Applicant	AJINOMOTO CO., INC.			Seal of Examiner	Date of Issue
Agent	China Patent Agent (H.K.) Ltd.				February 21, 2003
Patent Application No.	99121576.1	Application Date	October 19, 1999	Exam Dept.	
Title of Invention	L-GLUTAMIC ACID PRODUCING BACTERIUM AND PROCESS FOR PRODUCING L-GLUTAMIC ACID				

RECEIVED

JUN 12 2003

First Office Action

TECH CENTER 1600/2900

1. ☒ Pursuant to the provision of Article 35 (1) of the Chinese Patent Law, the examiner made an examination as to substance of the captioned patent application for invention upon the request for substantive examination filed by the applicant on _____.
- ☐ Pursuant to the provision of Article 35 (2) of the Chinese Patent Law, the Chinese Patent Office has decided to conduct on its own initiative an examination as to substance of the captioned patent application for invention.
2. ☒ The applicant requests taking the filing date, October 19, 1998, at the JP Patent Office, the filing date, _____, at the _____ Patent Office, the filing date, _____, at the _____ Patent Office as the priority date of the present application.
- ☒ A copy of the first filed patent application certified by the receiving organ of the initial country of filing has been submitted by the applicant.
- ☐ A copy of the first filed patent application certified by the receiving organ of the initial country of filing has not been submitted by the applicant. Pursuant to the provision of Article 30 of the Chinese Patent Law, no priority right shall be deemed to have been claimed.
3. ☐ The applicant filed amended application document(s) on _____ and _____.
- ☐ Examination has confirmed that _____ filed on _____ cannot be accepted, _____ filed on _____ cannot be accepted,
- as the above amendment(s) ☐ is/are not in conformity with the provision of Article 33 of the Chinese Patent Law.
- ☐ is/are not in conformity with the provision of Rule 51 of the Implementing Regulations of the Chinese Patent Law.

☐ For the specific reason that the amendment(s) cannot be accepted, see the text of the Office Action.

4. ☐ The examination is conducted in the light of the original application document(s)
- ☒ The examination is conducted in the light of the following application document(s):
in the original application documents submitted on the filing date: Claim(s) 4-12, 14-15, page(s) _____ of the description, Figure(s) _____ of the drawing(s); Claim(s) 1-3, 13, page(s) _____ of the description, Figure(s) submitted on February 22, 2000; Claim(s) _____, page(s) _____ of the description, Figure(s) _____ submitted on _____
- ☒ Abstract of the description submitted on the filing date.
5. ☐ The present Office Action has been prepared without a search having been conducted.
- ☒ The present Office Action has been prepared with a search having been conducted.
- ☒ The following reference document(s) is/are cited in this Office Action (its/their serial number(s) will, continue to be used throughout the examination procedure):

No.	Number or Title of Document	Date of Publication (or filing date of interfering application)
1	JP63214189	(Date) September 6, 1988
2	JP4365493	(Date) December 17, 1992
3		(Date)
4		

6. The concluding comments of the examiner are:

- ☐ On the description:
- ☐ The content of the application comes within the scope where no patent right is granted as provided in Article 5 of the Patent Law.
- ☐ The description is not in conformity with the provision of Article 26(3) of the Patent Law.
- ☐ The drafting of the description is not in conformity with the provision of Rule 18 of the Implementing Regulations.
- ☒ On the claims:
- ☐ Claim comes within the scope where no patent right is granted as provided in Article 25 of the Patent Law.
- ☐ Claim is not in conformity with the definition of invention in Rule 2(1) of the Implementing Regulations.
- ☐ Claim _____ does not possess novelty as provided in Article 22(2) of the Patent Law.
- ☒ Claim 1, 2 does not possess inventiveness as provided in Article 22(3) of the Patent Law.
- ☐ Claim _____ does not possess practical applicability as provided in Article 22(4) of the Patent Law.

- ☒ Claim 3 is not in conformity with the provision of Article 26(4) of the Patent Law.
- ☐ Claim is not in conformity with the provision of Article 31(1) of the Patent Law.
- ☒ Claim 1 is not in conformity with the provisions of Rules 20-23 of the Implementing Regulations.
- ☐ Claim is not in conformity with the provision of Article 9 of the Patent Law.
- ☐ Claim is not in conformity of the provision of Rule 12(1) of the Implementing Regulations.

For specific analyses of the above concluding comments, see the text of this Office Action.

7. In view of the above concluding comments, the examiner holds that:

- ☐ The applicant should amend the application document in accordance with the requirements raised in the text of this Office Action. The amended document(s) should be submitted in duplicate and should conform to the provisions of Article 33 of the Patent Law and Rule 51 of the Implementing Regulations of the Chinese Patent Law.
- ☐ The applicant should expound in his Observations the reasons why the captioned patent application is patentable and amend the places not conforming to regulations as pointed out in the text of the Office Action, otherwise it would be impossible for the patent right to be granted.
- ☒ The captioned patent application contains no substantive content for which the patent right may be granted, thus if the applicant has not advanced his reasons or has not done so adequately, the application will be rejected.

8. The applicant should pay attention to the following matters:

- (1) In accordance with the provision of Article 37 of the Patent Law, the applicant should submit his/its Observations within **four** months from the date of receipt of this Office Action; if, without any justified reason, the time limit for making response is not met, the application will be deemed to have been withdrawn.
- (2) The amendments made by the applicant to his application should conform to the provision of Article 33 of the Patent Law, the amended text should be in duplicate and the format should conform to the relevant provisions of the Guidelines for Examination.
- (3) The applicant's Observations or amended text should be mailed or presented to the Receiving Section of the Chinese Patent Office. Document not mailed or presented to the Acceptance Section have no legal force.
- (4) Without making an appointment, the applicant and/or agent may not come to the Chinese Patent Office to hold an interview with the examiner.

9. This Office Action consists of the text portion totalling 1 page(s) and of the following annex(es):

- ☒ 2 duplicate copies of the reference document(s) cited totalling 2 page(s).

中华人民共和国国家知识产权局

邮政编码: 100032

北京市西城区金融街 27 号投资广场 B 座 19 层
中国专利代理(香港)有限公司 北京办事处
卢新华 谭明胜

兰王印佩

审查员

专利局
2003.7.21
发文
(无审查业务专用章
不具备法律效力)

申请号: 99121576.1

部门及通知书类型: 4 -D

发文日期:

申请人:

味之素株式会社

发明名称:

L-谷氨酸生产菌和生产 L-谷氨酸的方法

第一次审查意见通知书

9962618

1. ☒ 申请人提出了实审请求, 根据专利法第 35 条第 1 款的规定, 审查员对上述发明专利申请进行实质审查。

☐ 根据专利法第 35 条第 2 款的规定, 国家知识产权局决定自行对上述发明专利申请进行审查。

2. ☒ 申请人要求以在:

日本	专利局的申请日	1998. 10. 19	为优先权日,
	专利局的申请日		为优先权日,
	专利局的申请日		为优先权日,
	专利局的申请日		为优先权日,
	专利局的申请日		为优先权日,

☒ 申请人已经提交了经原申请国受理机关证明的第一次提出的在先申请文件的副本。

☐ 申请人尚未提交经原申请国受理机关证明的第一次提出的在先申请文件的副本, 根据专利法第 30 条的规定视为未提出优先权要求。

3. ☐ 申请人于____年__月__日和____年__月__日提交了修改文件。

经审查, 其中: ____年__月__日提交的____不能被接受; ____年__月__日提交的____不能被接受;

因为上述修改 ☐ 不符合专利法第 33 条的规定。 ☐ 不符合实施细则第 51 条的规定。

修改不能被接受的具体理由见通知书正文部分。

4. ☐ 审查是针对原始申请文件进行的。

☒ 审查是针对下述申请文件进行的:

说明书

申请日提交的原始申请文件的第 4-12, 14-15 页;

2000 年 2 月 22 日提交的第 1-3, 13 页; ____年__月__日提交的第____页;

____年__月__日提交的第____页; ____年__月__日提交的第____页;

权利要求

申请日提交的原始申请文件的第 1 页;

____年__月__日提交的第____页; ____年__月__日提交的第____页;

____年__月__日提交的第____页; ____年__月__日提交的第____页;

附图

申请日提交的原始申请文件的第 2 页;

____年__月__日提交的第____页; ____年__月__日提交的第____页;

____年__月__日提交的第____页; ____年__月__日提交的第____页;

说明书摘要

☒ 申请日提交的;

☐ ____年__月__日提交的;

摘要附图

☐ 申请日提交的;

☐ ____年__月__日提交的。

- 8 JUL 2003

回函请寄: 100088 北京市海淀区蓟门桥西土城路 6 号 国家知识产权局专利局受理处收

2201 2001.7

(注: 凡寄给审查员个人的信函不具有法律效力)

5. ☐ 本通知书是在未进行检索的情况下作出的。

☒ 本通知书是在进行了检索的情况下作出的。

☒ 本通知书引用下述对比文献(其编号在今后的审查过程中继续沿用)：

编号	文件号或名称	公开日期 (或抵触申请的申请日)
1	JP63214189	1988年9月6日
2	JP4365493	1992年12月17日
3		年 月 日
4		年 月 日

6. 审查的结论性意见：

☐ 关于说明书：

☐ 申请的内容属于专利法第5条规定的不授予专利权的范围。

☐ 说明书不符合专利法第26条第3款的规定。

☐ 说明书的撰写不符合实施细则第18条的规定。

☒ 关于权利要求书：

☐ 权利要求____不具备专利法第22条第2款规定的新颖性。

☒ 权利要求1、2不具备专利法第22条第3款规定的创造性。

☐ 权利要求____不具备专利法第22条第4款规定的实用性。

☐ 权利要求____属于专利法第25条规定的不授予专利权的范围。

☒ 权利要求3不符合专利法第26条第4款的规定。

☐ 权利要求____不符合专利法第31条第1款的规定。

☐ 权利要求____不符合实施细则第2条第1款关于发明的定义。

☐ 权利要求____不符合实施细则第13条第1款的规定。

☒ 权利要求1不符合实施细则第20条至第23条的规定。

☐

上述结论性意见的具体分析见本通知书的正文部分。

7. 基于上述结论性意见，审查员认为：

☐ 申请人应按照通知书正文部分提出的要求，对申请文件进行修改。

☐ 申请人应在意见陈述书中论述其专利申请可以被授予专利权的理由，并对通知书正文部分中指出的不符合规定之处进行修改，否则将不能授予专利权。

☒ 专利申请中没有可以被授予专利权的实质性内容，如果申请人没有陈述理由或者陈述理由不充分，其申请将被驳回。

☐

8. 申请人应注意下述事项：

(1) 根据专利法第37条的规定，申请人应在收到本通知书之日起的肆个月内陈述意见，如果申请人无正当理由逾期不答复，其申请将被视为撤回。

(2) 申请人对其申请的修改应符合专利法第33条的规定，修改文本应一式两份，其格式应符合审查指南的有关规定。

(3) 申请人的意见陈述书和/或修改文本应邮寄或递交给国家知识产权局专利局受理处，凡未邮寄或递交给受理处的文件不具备法律效力。

(4) 未经预约，申请人和/或代理人不得前来国家知识产权局专利局与审查员举行会晤。

9. 本通知书正文部分共有1页，并附有下列附件：

☒ 引用的对比文件的复印件共2份2页。

☐

回函请寄：100088北京市海淀区蓟门桥西土城路6号 国家知识产权局专利局受理处收

2201 99.1

(注：凡寄给审查员个人的信函不具有法律效力)

第一次审查意见通知书

本申请涉及 L-谷氨酸生产菌和使用该细菌通过发酵方法生产 L-谷氨酸的方法。

权利要求 1 不具备创造性。对比文件 1—JP63214189 公开了一种棒状杆菌，该细菌重组了选自具有谷氨酸生产能力的棒状杆菌的谷氨酸脱氢酶基因及柠檬酸合成酶基因的 DNA，并且指出上述基因与谷氨酸的生物合成途径相关（参见该对比文件说明书摘要）。而将肠细菌如埃希氏菌属细菌作为载体生产谷氨酸是本领域常用的技术手段，因此将已知的具有谷氨酸生产能力的基因片断导入已知的用于生产谷氨酸的载体对本领域技术人员来说是显而易见的，本领域技术人员在对比文件 1 的基础上结合本领域公知常识不需要花费创造性劳动即可得到权利要求 1 所要保护的技术方案，并且该技术方案也没有产生预料不到的技术效果。因此，权利要求 1 不具备创造性，不符合专利法第 22 条第 3 款的规定。

权利要求 2 不具备创造性。对比文件 2—JP4365493 公开了用属于乳发酵短杆菌菌株生产谷氨酸的方法（参见该对比文件说明书摘要）。而将肠细菌作为载体生产谷氨酸是本领域常用的技术手段，因此将对比文件 2 所述的乳发酵短杆菌的具有谷氨酸生产能力的基因片断导入已知的用于生产谷氨酸的载体对本领域技术人员来说是显而易见的，由此可知，本领域技术人员在对比文件 1 和 2 的基础上结合本领域公知常识得到权利要求 2 要求保护的技术方案是显而易见的，并且该技术方案也没有产生预料不到的技术效果。因此，权利要求 2 不具备创造性，不符合专利法第 22 条第 3 款的规定。

权利要求 3 没有以说明书为依据。该权利要求所述的“属于肠杆菌属或克雷伯氏菌属的细菌”概括了一个较宽的范围，而说明书实施例中只给出了用成团肠杆菌或植生克雷伯氏菌这两种菌株生产 L-谷氨酸的方法。本领域技术人员根据专业知识及说明书不能概括得出或直接做出所有的“属于肠杆菌属或克雷伯氏菌属的细菌”均能达到本发明的目的。因此该权利要求不能得到说明书的支持，不符合专利法第 26 条第 4 款的规定。

即使申请人将权利要求 1 进行限定，本申请仍存在如下不足：

权利要求 1 不清楚。本申请说明书只描述了通过构建具体的基因质粒，并将其引入特定 L-谷氨酸生产菌株的实施方式，而该权利要求要求保护的技术方案使用了功能性限定，这样的描述覆盖了所用能够实现所述功能的实施方式，从而导致该权利要求保护范围不清楚，不符合专利法实施细则第 20 条第 1 款的规定。

基于上述理由，本申请按照目前的文本还不能被授予专利权。如果申请人按照本通知书提出的审查意见对申请文件进行修改，克服所存在的缺陷，则本申请可望被授予专利权，否则本申请将被驳回。请申请人注意，对申请文件的修改应当符合专利法第 33 条的规定，不得超出原说明书和权利要求书记载的范围，并且修改应符合专利法实施细则第 51 条第 1 款的规定。